

**CONTRACT #5
RFS #317.03-16808
FA #08-22491
Edison #2897**

**Finance & Administration
Office for Information
Resources (OIR)**

**VENDOR:
Gartner, Inc.**



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES
312 EIGHTH AVENUE NORTH
SUITE 1600, TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-0288
(615) 741-3700
FAX (615) 532-0471

MARK EMKES
COMMISSIONER

MARK BENDEL
CHIEF INFORMATION OFFICER

March 20, 2012

Mr. Lucian Geise, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN

Dear Sir:

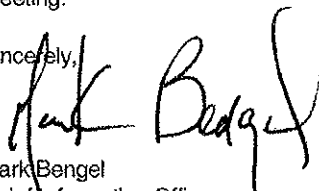
Please find attached, for the Fiscal Review Committee's consideration, documentation of a Non-Competitive Amendment request pertaining to the State's contract with Gartner, Inc. for the provision of information technology research and advisory services. The Department of Finance and Administration respectfully requests to be placed on the agenda to present this request at the next Fiscal Review Committee meeting.

The Department of Human Services (DHS), in conjunction with the Office for Information Resources (OIR), has identified the need for an independent review of the ongoing viability of DHS's Vision Integration Platform (VIP) project. Gartner, Inc. has done a similar independent review in the past, and is an appropriate resource to perform this task. While this does not impact the overall contract amount, it does require funds to be moved from one area to another. There is a cap on the amount for consulting services in the Gartner contract. This simply allows funds to be moved within the contract for consulting services to accommodate the independent review of VIP.

The Department has reached a critical point in this contract. The independent review will give them important insight on how best to move forward in this situation. Delaying this review would be costly; therefore the State is requesting a waiver of the usual 60-day lead time window for delivery to the Fiscal Review Committee.

Thank you for your consideration of this request. We look forward to appearing before the Committee at its next scheduled meeting.

Sincerely,


Mark Bengel
Chief Information Officer



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE FOR INFORMATION RESOURCES
312 ROSA L. PARKS AVENUE
SUITE 1600, TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-1102
(615) 741-3700
FAX (615) 532-0471

MARK A. EMKES
COMMISSIONER

MARK BENGEL
CHIEF INFORMATION OFFICER

MEMORANDUM

TO: Kippine Smith
FROM: Pat Miller *PM*
SUBJECT: Waiver of 60-Day Lead-Time
DATE: March 19, 2012

The Department of Human Services (DHS), in conjunction with the Office for Information Resources (OIR), has identified the need for an independent review of the ongoing viability of DHS's Vision Integration Platform (VIP) project. Gartner, Inc. has done a similar independent review in the past, and is an appropriate resource to perform this task. While this does not impact the overall contract amount, it does require funds to be moved from one area to another. There is a cap on the amount for consulting services in the Gartner contract. This amendment allows funds to be moved within the contract for consulting services to accommodate the independent review of VIP.

The Department has reached a critical point in this contract. The independent review will give them important insight on how best to move forward in this situation. Delaying this review would be costly; therefore the State is requesting a waiver of the usual 60-day lead time window for delivery to the Fiscal Review Committee.

We apologize in advance for the tardiness of this request and thank you for your consideration.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Pat Miller	*Contact Phone:	615-253-1411		
*Original Contract Number:	FA-08-22491-00	*Original RFS Number:	317.03-168-08		
Edison Contract Number: (if applicable)	2897	Edison RFS Number: (if applicable)	N/A		
*Original Contract Begin Date:	August 24, 2007	*Current End Date:	August 23, 2012		
Current Request Amendment Number: (if applicable)	1				
Proposed Amendment Effective Date: (if applicable)	April 1, 2012				
*Department Submitting:	Finance and Administration				
*Division:	OIR				
*Date Submitted:	March 20, 2012				
*Submitted Within Sixty (60) days:	No				
If not, explain:	The Department has reached a critical point in this contract. The independent review will give them important insight on how best to move forward in this situation. Delaying this review would be costly; therefore the State is requesting a waiver of the usual 60-day lead time window for delivery to the Fiscal Review Committee.				
*Contract Vendor Name:	Gartner, Inc.				
*Current Maximum Liability:	\$1,144,918				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2008	FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY: 2013
\$365,400	\$250,000	\$267,000	\$276,350	\$261,168	\$25,000
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report) See Attachment A					
FY: 2008	FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY: 2013
\$103,700	\$267,000	\$277,450	\$277,905	\$339,732	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			The yearly contract allocations detailed above were estimates based on the anticipated timing for implementing the various disaster recovery environments.		
IF surplus funds have been carried forward, please give the reasons			Surplus funds were not carried forward.		

Supplemental Documentation Required for
Fiscal Review Committee

and provide the authority for the carry forward provision:			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		Contract expenditures have not exceeded the Contract maximum liability.	
*Contract Funding Source/Amount:	State:		Federal:
Interdepartmental:		\$1,144,918	Other:
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A			
Method of Original Award: <i>(if applicable)</i>		Request for Proposals	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$1,500,000	

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2008	FY: 2009	FY: 2010	FY: 2011	FY: 2012
Gartner Keys	\$103,700	\$109,500	\$119,950	\$125,688	\$131,732
Consulting		\$157,500	\$157,500	\$152,217	\$208,000
	FY: 2013				
Gartner Keys	\$129,348				
Consulting	\$49,783				

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
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By amending this contract, the Department of Human Services will have the benefit of an independent assessment of whether the vendor on the VIP contract can meet its obligations in delivering this system. This could potentially result in significant cost avoidance.

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
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The Office for Information Resources does not believe that there are other options for providing these services that would be in the State's best interest, financially or otherwise. The State already has a contract with Gartner, Inc. that provides consulting services to perform independent system reviews, and Gartner is well qualified perform the services. It would not make financial or business sense to incur the expense to set up a separate contract for these services.

Attachment A

	All Payments	All Payments Spend Down	Comments
		\$1,444,918.00	Begin Maximum Liability
FY 2008	\$103,700.00	\$1,341,218.00	Keys Year 1 (STARS)
	\$103,700.00		FY2008 Total Spend
FY 2009	\$109,500.00	\$1,231,718.00	Keys Year 2 (STARS); Begin Max Liability Edison
	\$157,500.00	\$1,074,218.00	Consulting - ERP Assessment
	\$267,000.00		FY2009 Total Spend
FY2010	\$157,500.00	\$916,718.00	Consulting - ERP Assessment
	\$119,950.00	\$796,768.00	Keys Year 3
	\$277,450.00		FY2010 Total Spend
FY 2011	\$45,665.10	\$751,102.90	Consulting - HIE Vendor Selection Assessment
	\$106,551.90	\$644,551.00	Consulting - HIE Vendor Selection Assessment
	\$125,687.50	\$518,863.50	Keys Year 4
	\$277,904.50		FY2011 Total Spend
FY 2012	\$131,732.20	\$387,131.30	Keys Year 5; Current Remaining Amount Edison
	\$208,000.00	\$179,131.30	Consulting - DHS VIP Assessment (Projected)
	\$339,732.20		FY2012 Total Spend (Projected)
		\$179,131.30	Remaining Contract Funds (Projected)
	Consulting Payments	Consulting Spend Down	Comments
		\$500,000.00	Begin Consulting Cap
FY 2008	\$0.00	\$500,000.00	
	\$0.00		FY 2008 Total Consulting Spend
FY 2009	\$157,500.00	\$342,500.00	Consulting - ERP Assessment
	\$157,500.00		FY 2009 Total Consulting Spend
FY2010	\$157,500.00	\$185,000.00	Consulting - ERP Assessment
	\$157,500.00		FY 2010 Total Consulting Spend
FY2011	\$45,665.10	\$139,334.90	Consulting - HIE Vendor Selection Assessment
	\$106,551.90	\$32,783.00	Consulting - HIE Vendor Selection Assessment
	\$152,217.00		FY 2011 Total Consulting Spend
		\$725,000.00	Amended Consulting Cap
		\$467,217.00	Consulting Spend FY2008 Thru FY2011
		\$257,783.00	Remaining Consulting Funds
FY2012	\$208,000.00	\$49,783.00	Consulting - DHS VIP Assessment (Projected)
	\$208,000.00		FY 2012 Total Consulting Spend (Projected)
		\$49,783.00	Remaining Consulting Funds (Projected)
		\$129,348.30	

Non-Competitive Amendment Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	31701-03073	
1. Procuring Agency	Department of Finance and Administration	
2. Contractor	Gartner, Inc.	
3. Contract #	FA-08-22491	
4. Proposed Amendment #	1	
5. Edison ID #	2897	
6. Contract Begin Date	August 24, 2007	
7. Current Contract End Date – with ALL options to extend exercised	August 23, 2012	
8. Proposed Contract End Date – with ALL options to extend exercised	August 23, 2012	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 1,144,918.00	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 1,144,918.00	
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment The Department of Human Services (DHS), in conjunction with the Office for Information Resources (OIR), has identified the need for an independent review of the ongoing viability of DHS's Vision Integration Platform (VIP) project. Gartner, Inc. has done a similar independent review in the past, and is an appropriate resource to perform this task. While this does not impact the overall contract amount, it does require funds to be moved from one area to another. There is a cap on the amount for consulting services in the Gartner contract. This simply allows funds to be moved within the contract for consulting services to accommodate the independent review of VIP.		

Request Tracking #	31701-03073
15. Name & Address of the Contractor's Principal Owner(s) <i>– NOT required for a TN state education institution</i> Gartner, Inc. 12112 Hadden Hall Drive Chesterfield, VA 23838	
16. Evidence Contractor's Experience & Length Of Experience Providing the Service Gartner successfully performed a similar review of the Edison project.	
17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives No effort was made to identify other alternatives. (See Item 18 below.)	
18. Justification <i>– specifically explain why non-competitive negotiation is in the best interest of the state</i> The State already has a contract with Gartner, Inc. that provides consulting services to perform independent system reviews, and Gartner is well qualified perform the services. It would not make financial or business sense to set-up a separate contract for these services.	
Agency Head Signature and Date <i>– MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i> 	



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Pat Miller
E-mail : pat.miller@tn.gov

DATE : 3/19/2012

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 31701-03073

OIR Endorsement Signature & Date:

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Department of Finance and Administration										
Agency Contact (name, phone, e-mail)	Pat Miller, 615-253-1411, pat.miller@tn.gov										
Subject Procurement Document (mark one) <table border="0"> <tr> <td><input type="checkbox"/> RFP</td> <td><input type="checkbox"/> Contract</td> </tr> <tr> <td><input type="checkbox"/> Competitive Negotiation Request</td> <td><input type="checkbox"/> Contract Amendment</td> </tr> <tr> <td><input type="checkbox"/> Alternative Procurement Method Request</td> <td><input type="checkbox"/> Grant</td> </tr> <tr> <td><input type="checkbox"/> Non-Competitive Contract Request</td> <td><input type="checkbox"/> Grant Amendment</td> </tr> <tr> <td><input checked="" type="checkbox"/> Non-Competitive Amendment Request</td> <td></td> </tr> </table>		<input type="checkbox"/> RFP	<input type="checkbox"/> Contract	<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment	<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant	<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment	<input checked="" type="checkbox"/> Non-Competitive Amendment Request	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract										
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment										
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant										
<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment										
<input checked="" type="checkbox"/> Non-Competitive Amendment Request											
Information Systems Plan (ISP) Project Applicability <table border="0"> <tr> <td><input checked="" type="checkbox"/> Not Applicable to this Request</td> </tr> <tr> <td><input type="checkbox"/> Applicable-- ISP Project#</td> </tr> </table>		<input checked="" type="checkbox"/> Not Applicable to this Request	<input type="checkbox"/> Applicable-- ISP Project#								
<input checked="" type="checkbox"/> Not Applicable to this Request											
<input type="checkbox"/> Applicable-- ISP Project#											
Response Confirmed by IT Director/Staff (name): Jane Chittenden											

Applicable RFS # 31701-03073

Required Attachments (as applicable – copies without signatures acceptable)

- ☒ RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request
- ☐ Original Contract/Grant or Amendment
- ☐ Proposed Contract/Grant or Amendment

Subject Information Technology Service Description

(Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.)

Information technology research and advisory services. Amendment increases the consulting services cap to provide sufficient funds to complete an independent review of DHS's VIP system development project.



CONTRACT AMENDMENT

Agency Tracking # 31701-03073	Edison ID 2897	Contract # FA-08-22491	Amendment # 1		
Contractor Legal Entity Name Gartner, Inc.			Edison Vendor ID 4959		
Amendment Purpose & Effect(s) Information technology research and advisory services. Amendment increases the aggregate dollar amount cap on consulting services.					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: August 23, 2012			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008			365,400.00		365,400.00
2009			250,000.00		250,000.00
2010			267,000.00		267,000.00
2011			276,350.00		276,350.00
2012			261,168.00		261,168.00
2013			25,000.00		25,000.00
TOTAL:			\$1,144,918.00		\$1,144,918.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			OCR USE		
Speed Chart (optional) FA00000247		Account Code (optional) 72203000			

**AMENDMENT 1
OF CONTRACT FA-08-22491 (Edison # 2897)**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "State" and Gartner, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section C.3.b is deleted in its entirety and replaced with the following:

C.3.b. Consulting Services Payment Methodology:

The Contractor shall be compensated for Consulting Services (Contract Section A.6), based on the following hourly rates.

Consulting Service Hourly Rates					
Service Rates	Year 1	Year 2	Year 3	Year 4	Year 5
Consultant With Greater Than 15 Years IT-Related Experience	\$402.00	\$402.00	\$402.00	\$402.00	\$402.00
Consultant With 10 Years To 15 Years IT-Related Experience	\$375.00	\$375.00	\$375.00	\$375.00	\$375.00
Consultant With 5 Years To Less Than 10 Years IT-Related Experience	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00
Consultant With Less Than 5 Years IT-Related Experience	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

Compensation to the Contractor for Consulting Services shall not exceed Seven Hundred Twenty-Five Thousand Dollars (\$725,000.00) during the term of the Contract. In the event that the State's use of Consulting Services necessitates an increase in the cap listed in this section, the State shall amend the contract to increase the Consulting Services cap and the State's maximum liability, and this amendment shall be based upon rates provided for in the original Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations

(depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective April 1, 2012. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

GARTNER, INC.:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

MARK A. EMKES, COMMISSIONER

DATE

CONTRACT SUMMARY SHEET

070407

RFS #	Contract #
317.03 — 168 — 08	FA-08-22491-00
State Agency	State Agency Division
Department of Finance and Administration	Office for Information Resources
Contractor Name	Contractor ID # (FEIN or SSN)
Gartner, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 04-3099750

Service Description
Information technology research and advisory subscription services.

Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
August 24, 2007	August 23, 2012	VENDOR	

Mark Each TRUE Statement

<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts
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Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
317.03	172	082	12		

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008			365,400.00		365,400.00
2009		RELEASED TO	250,000.00		250,000.00
2010		ACCOUNT'S DIVISION	267,000.00		267,000.00
2011		AUG 22 2007	276,350.00		276,350.00
2012			261,168.00		261,168.00
2013		BY OFFICE OF	25,000.00		25,000.00
		CONTRACTS REVIEW			
TOTAL:			\$1,144,918.00		\$1,144,918.00

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Maureen Abbey, 741-6070
2007	2007 AUG 20 AT 8:00 AM		State Agency Budget Officer Approval
Funding Certification (certification required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)			
TOTAL:			AUG 22 2007
End Date:			

Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	

* **Procurement Process Summary** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

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CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE & ADMINISTRATION
AND
GARTNER, INC.

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the "STATE" and Gartner, Inc., hereinafter referred to as the "Contractor," is for the provision of Information Technology (IT) Research and Advisory Subscription Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is:

56 Top Gallant Road, Stamford, CT 07904.

The Contractor's place of incorporation or organization is the State of Delaware.

A SCOPE OF SERVICES:

- A.1 The Contractor shall provide Research and Advisory Services that include created and published research reports, planning assumptions, strategic analysis reports, research notes, bulletins, alerts, and summary and evaluations of the IT industry, issues, products and major IT trends in the marketplace. The State acknowledges that the information provided in the Research and Advisory Services is as of the publication date and that the Contractor has no obligation to advise the State of any change in the information.
- A.2 The Contractor shall provide membership keys to all of the Contractor's research and advisory services with unlimited access to analyst(s) inquiry. The Contractor shall provide access to the analyst(s) within seven (7) business days of the State's inquiry request. A business day is defined as 8:00 a.m. (C.S.T.) to 4:30 p.m. (C.S.T.), excluding weekends and official state holidays. A telephone call with the analyst or email response from the analyst shall be scheduled within twenty-four (24) to forty-eight (48) business hours of the initial inquiry request.
- A.3 The Contractor shall provide membership keys to all of the Contractor's research and advisory services with no access to analyst(s) inquiry.
- A.4 The Contractor shall provide all membership keys (with analyst inquiry or with no analyst inquiry) web-based inquiry to all research and advisory services, access to web casts, and access to online briefings as requested by the State, at the rates set forth in Section C.3.
 - A.4.a The State shall designate named users who are licensed to use the membership keys ("Named Users"). Access will be limited to the purchased number of membership keys and associated Named Users. At the Contractor's option, multiple Named Users may share the same membership key. However, such sharing is not required by the State. If the Contractor elects to allow Named Users to share membership keys, the capability must be included in the rates for memberships set forth in Section C.3. If the Contractor elects not to allow such sharing, Named Users will not share membership keys.
 - A.4.b The State shall have the right to reassign purchased membership keys to different Named Users, i.e., substitute one Named User for another, at its sole discretion and at no additional cost to the State. The State will notify the Contractor of all Named User changes. The State will follow Contractor procedures for reassignment of keys and/or passwords as long as these procedures do not conflict with the terms of this Contract.
 - A.4.c The Contractor shall provide all Named Users the ability to access created and published research reports, planning assumptions, strategic analysis reports, research notes, bulletins,

alerts, and summary and evaluations of the IT industry, issues, products and major IT trends in the marketplace ("Research Documents") via the Internet using a web-browser.

- A.4.d The Contractor shall provide all Named Users the ability to download Research Documents in PDF format. Named Users may distribute printed or electronic copies in accordance with Contract Section E.12.
- A.5 The Contractor shall provide Named Users, licensed for membership keys with analyst inquiry, the ability to send inquiries and questions to the Contractor via electronic mail and telephone.
- A.5.a The Contractor shall provide the ability to send Research Documents to Named Users via electronic mail.
- A.6 The Contractor shall provide consulting services for special limited purpose projects, such as, assistance with a Disaster Recovery Assessment (example only), as requested by the State. Special projects may be identified through a Statement of Work provided by the State to the Contractor.
- A.6.a The Contractor shall respond to the Statement of Work with a proposal that must include the following:
 - i. Complete description of the work to be performed;
 - ii. Workplan, including a timeframe, tasks, and resource loading;
 - iii. Staffing plan, specifying the consultant roles from the table in Contract Section C.3 that will be used for the project;
 - iv. Maximum consulting services cost, which the Contractor shall calculate by using the Consulting Services hourly rates set forth in Section C.3.b of this Contract. The hourly rates shall be fully loaded to include all costs, administrative or otherwise, with the exception of travel expenses, that the Contractor expects to charge. The State will not pay any costs for special limited purpose projects apart from hourly rates and travel. This maximum consulting services cost shall be a "not to exceed" total cost; the State shall pay no more than this cost for the consulting services.
 - v. Maximum travel compensation cost, which the Contractor shall estimate based on the provisions of Contract Section C.4. The State will not pay any costs for special limited purpose projects apart from hourly rates and travel. This travel compensation cost shall be a "not to exceed" total cost; the State shall pay no more than this cost for travel compensation.
- A.6.b The Contractor shall build the project team for each special project using the consultant roles listed in Contract Section C.3.b. The State reserves the right to question the composition of, and request changes to, the proposed project team.

The State also has the sole discretion to accept or reject the Contractor's proposal in its entirety.
- A.7 The Contractor shall provide one (1) on-site briefing annually to the State for every four (4) membership keys (with analyst inquiry or with no analyst inquiry) purchased. The State, in discussion with the Contractor, will select the technology and/or management issue to be addressed for the briefings. No additional fees shall be paid to the Contractor for the briefing.
- A.8 The Contractor shall assign an Account Representative who shall be the State's primary point of contact for services. The Contractor shall notify the State in writing within one week if the Account Representative changes.

A.9 Contractor shall provide attendance for one (1) State-designated individual to any Contractor conference of up to one (1) week in length, regardless of conference type, at the rates set forth in C.3. If the rates set forth in C.3 are greater than the published client rate for a conference, the State shall pay the published client rate for the conference. No additional fees shall be paid to the Contractor for the conference.

A.10 Contractor shall provide one (1) conference ticket annually for every two (2) membership keys (with analyst inquiry or with no analyst inquiry) purchased. The initial ticket shall be provided at the time the required numbers of membership keys are purchased. Subsequent tickets shall be provided on the anniversary of the contract start date every year thereafter. Each conference ticket shall provide attendance for one (1) State-designated individual to any Contractor conference of up to one (1) week in length, regardless of conference type. No additional fees shall be paid to the Contractor for the conference.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on August 24, 2007 and ending on August 23, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1 Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million, Four Hundred Forty-Four Thousand, Nine Hundred Eighteen Dollars and No Cents (\$1,444,918.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates.

C.3.a. Research & Advisory Services Membership and Conference Attendance:

The Contractor shall be compensated for Research & Advisory Services Membership and Conference Attendance based on the following unit rates.

Research & Advisory Membership and Conference Fees					
Service Rates	Year 1	Year 2	Year 3	Year 4	Year 5
Bundled Membership Cost for 4/2 Users Four (4) users with full research & advisory services access. Two (2) of those users additionally have analyst inquiry privileges.	\$63,800.00	\$67,000.00	\$73,200.00	\$76,610.00	\$80,190.40
Bundled Membership Cost for 6/3 Users Six users (6) with full research and advisory services access. Three (3) of those users will additionally have analyst inquiry privileges.	\$93,200.00	\$98,000.00	\$107,300.00	\$112,415.00	\$117,785.60
Bundled Membership Cost for 10/4 Users Ten (10) users with full research and advisory services access. Four (4) of those users will additionally have analyst inquiry privileges.	\$144,400.00	\$152,000.00	\$166,700.00	\$174,785.00	\$183,274.00
Single Membership with Analyst Inquiry Privileges Cost - Bundle Add-On A single user to have full research and advisory services access and additionally have analyst(s) inquiry privileges. (Note: A bundled group of users has already been purchased by the State and this is an add-on to existing membership base.)	\$18,500.00	\$19,500.00	\$21,450.00	\$22,522.50	\$23,648.60

Single Membership with no Analyst Inquiry Privileges Cost - Bundle Add-On A single user to have full research and advisory services access with no analyst(s) inquiry privileges. (Note: A bundled group of users has already been purchased by the State and this is an add-on to existing membership base.)	\$10,500.00	\$11,500.00	\$12,650.00	\$13,282.50	\$13,946.60
Single Membership with Analyst Inquiry Privileges Cost - No Bundle A single user to have full research and advisory services access and additionally have analyst(s) inquiry privileges. (Note: A bundled group of users <u>has not been</u> purchased by the State.)	\$30,200.00	\$31,500.00	\$33,075.00	\$34,728.75	\$36,465.20
Single Membership Cost with no Analyst Inquiry Privileges Cost - No Bundle A single user to have full research and advisory services access with no analyst(s) inquiry privileges. (Note: A bundled group of users <u>has not been</u> purchased by the State.)	\$22,600.00	\$23,500.00	\$24,675.00	\$25,908.75	\$27,204.20

Technology Conference Registration Fee Registration fee for a Conference of up to one (1) week in length, regardless of conference type, offered by the Contractor	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
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C.3.b. Consulting Services Payment Methodology:

The Contractor shall be compensated for Consulting Services (Contract Section A.6), based on the following hourly rates.

Consulting Service Hourly Rates					
Service Rates	Year 1	Year 2	Year 3	Year 4	Year 5
Consultant With Greater Than 15 Years IT-Related Experience	\$402.00	\$402.00	\$402.00	\$402.00	\$402.00
Consultant With 10 Years To 15 Years IT-Related Experience	\$375.00	\$375.00	\$375.00	\$375.00	\$375.00
Consultant With 5 Years To Less Than 10 Years IT-Related Experience	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00
Consultant With Less Than 5 Years IT-Related Experience	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00

The Contractor shall not be compensated for travel time to the primary location of service provision.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

Compensation to the Contractor for Consulting Services shall not exceed Five Hundred Thousand Dollars (\$500,000.00) during the term of the Contract. In the event that the State's use of Consulting Services necessitates an increase in the cap listed in this section, the State shall

amend the contract to increase the Consulting Services cap and the State's maximum liability, and this amendment shall be based upon rates provided for in the original Contract.

- C.3.c. The Contractor shall submit invoices, no more often than monthly, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. Travel reimbursement requests must be submitted on the current State of Tennessee Travel Reimbursement form and include receipts as supporting documentation for the expenses.

- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest," and "Nondiscrimination," (sections D.6., D.7). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

William Hafley, Acting Director, Quality Assurance, Testing and Research
Department of Finance and Administration
Suite 1700, Wm. R. Snodgrass Tennessee Tower
312 8th Avenue North
Nashville, TN 37243-1510
(615) 741-7196 Telephone
(615) 741-6164 FAX

The Contractor:

Tiffany Moglebust, Sr. Account Executive
Gartner, Inc.
12112 Hadden Hall Drive, Chesterfield VA 23838
804 778 7995
800 219 7086

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile

transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4 State Ownership of Work Products. With the exception of pre-existing Contractor intellectual property (Contractor Materials) contained therein, the State shall have all ownership right, title, and interest, including ownership of copyright, in all work products, including deliverables, created, designed, or developed solely for the State under this Contract during a consulting services engagement, as defined in Section A.6. The State shall have royalty-free and exclusive rights to use, disclose, reproduce, or publish within State government and for State business purposes, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law. Notwithstanding the foregoing, the State may share work products (i) with State oversight authorities, (ii) with third parties who are engaged by the State to review, implement, or further research the topics contained in the work products (such third parties will be advised of work product confidentiality), and (iii) as required by State or Federal law.
- E.4.a. Contractor Ownership of Services and Intellectual Properties. The Contractor shall retain ownership right, title, and interest (including copyright where legally applicable) of their Services and intellectual properties (Contractor Materials). Contractor Materials are pre-existing documents or information developed by the Contractor without using State money or resources, and identified as such in all work products submitted to the State.
- E.4.b. Acquired Knowledge and Skills. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- E.4.c. Development of Similar Materials. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.5. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
 - b. All Clarifications and addenda made to the Contractor's Proposal
 - c. The Request for Proposal and its associated amendments
 - d. Technical Specifications provided to the Contractor
 - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.6. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.8. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in ***Tennessee Code Annotated***, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to ***Tennessee Code Annotated***, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.9. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-317.03-141 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.
- The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Business Diversity Enterprise in form and substance as required by said office.
- E.10. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if

any. The foregoing provision shall not limit the contractor's liability for intentional torts, criminal acts or fraudulent conduct.

- E.11. Monitoring and Compliance. Upon request of the Contractor and no more often than once during each one hundred eighty (180) day period of the Contract, the State agrees to provide the Contractor with available records or other relevant evidence, such as a written letter of confirmation, of State compliance with the Contract regarding use of the Contractor's online research and advisory services. The Contractor or designated independent representative may conduct reviews of the State's records to verify compliance with this Contract. Any such review shall be limited to an examination of data that is relevant to determining the use of the Contractor's online research and advisory services. These reviews shall be by mutual agreement during the State's regular business hours upon no less than two (2) weeks notice.

E.12. Use of Research and Advisory Services.

- a. Definitions. In the following provisions defining the allowable use of research and advisory services, the terminology employed shall have the following meanings:
- i. "Research Event." An instance in which a Named User accesses and/or downloads Research Documents for the State's business purposes and the State then makes use of the Research Documents to derive conclusions relevant to the event.
 - ii. "Research Team." A collection of one or more Research Team Members assigned to work on a Research Event.
 - iii. "Research Team Member." An individual assigned to a Research Team. This individual may work for the Department of Finance and Administration, Office for Information Resources (F&A/OIR), or may work for an entity listed in Contract Attachment B. The entities named in Contract Attachment B are not fixed and may change from time to time; however, regardless of these changes, such entities shall always remain within State government. Contract Attachment B does not, and will not, include the Tennessee Board of Regents and The University of Tennessee. A Research Team Member may or may not be a Named User.
 - iv. "OIR-Managed Research Event." Refers to Research Event that is directly managed by F&A/OIR.
 - v. "Non-OIR-Managed Research Event." Refers to a Research Event that is not managed by F&A/OIR.
 - vi. "Chain of Command." Management personnel within State government that are hierarchically above, and/or that have authority over, a Research Team.
- b. Authorized State Use.
- i. OIR-Managed Research Event. For an OIR-Managed Research Event, a Named User may, for the State's own business purposes and at no additional cost, distribute copies of Research Documents, in electronic or other formats, to the Research Team, the Research Team Members, and/or the Chain of Command associated with the event. Such distribution shall be limited only to those individuals with a job-related "need to know" and shall be for defined State business purposes, such as the research of IT trends, IT-related business issues, products and/or best practices.
 - ii. Non-OIR-Managed Research Event. For a Non-OIR-Managed Research Event, a Named User may, for the State's own business purposes and at no additional cost, distribute one (1) copy of Research Documents, in print form, to a State-designated Research Team Member. This Research Team Member may circulate this same copy of the Research Document to other Research Team Members and/or the Chain of Command associated with the event. Such


circulation shall be limited only to those individuals with a job-related "need to know" and shall be for defined State business purposes, such as the research of IT trends, IT-related business issues, products and /or best practices.

iii. The State may make limited copies and/or excerpts from individual Research Documents for internal presentations or reports associated with OIR-Managed or Non-OIR-Managed Research Events, provided the excerpt is within the limits of "fair use" under applicable copyright law.


c. Restrictions on State Use. The State may not reproduce or distribute Research Documents, to individuals not authorized as recipients under the terms of Contract Section E.12.b, either by electronic means or otherwise without the Contractor's prior written permission. Research documents, in and of themselves, are not Work Products as defined in E.4, and are governed by the intellectual property provisions of E.4.a. This E.12.c provision does not apply to any disclosure authorized by this Contract or required by State or Federal law.

IN WITNESS WHEREOF:

GARTNER, INC.:


 8-15-07

William F. Mohan, Jr., Sr. Director, Government & Higher Education Contracts Date

 SR. DIRECTOR, GOVT + HIGHER EDUCATION CONTRACTS.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

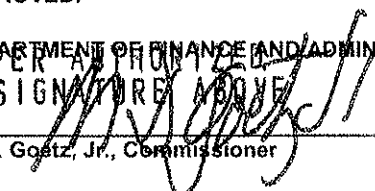
DEPARTMENT OF FINANCE AND ADMINISTRATION:

 8-17-07

M.D. Goetz, Jr., Commissioner Date

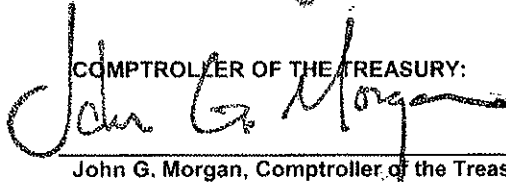
APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

PER AUTHORIZED SIGNATURE ABOVE
 AUG 17 2007

M. D. Goetz, Jr., Commissioner Date

COMPTROLLER OF THE TREASURY:

 8/20/07

John G. Morgan, Comptroller of the Treasury Date

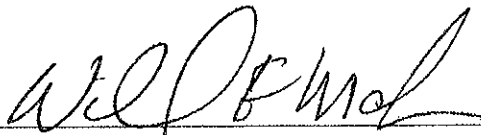
Contract Attachment A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Gartner, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	04-3099750

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

 8-15-07

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Contract Attachment B

State Agencies, Boards, and Commissions

Alcoholic Beverage Commission
Bureau of TennCare
Commission on Aging and Disability
Comptroller of the Treasury
Corrections Institute
Department of Agriculture
Department of Children's Services
Department of Commerce & Insurance
Department of Correction
Department of Economic & Community Development
Department of Education
Department of Environment & Conservation
Department of Finance & Administration
Department of Financial Institutions
Department of General Services
Department of Health
Department of Human Services
Department of Labor & Workforce Development
Department of Mental Health and Developmental Disabilities
Department of Military
Department of Personnel
Department of Revenue
Department of Safety
Department of Tourist Development
Department of Transportation
Department of Veterans Affairs
District Attorneys General Conference
District Public Defenders Conference
Division of Mental Retardation Services
Legislature (General Assembly)
Office of Attorney General and Reporter
Office of the Governor
Office of Post Conviction Defender
State Board of Education
State Museum
Tennessee Administrative Office of the Courts
Tennessee Advisory Commission on Intergovernmental Relations (TACIR)
Tennessee Arts Commission
Tennessee Board of Probation & Parole
Tennessee Bureau of Investigation
Tennessee Commission on Children & Youth
Tennessee Department of State (Secretary of State)
Tennessee Health Services and Development Agency
Tennessee Higher Education Commission
Tennessee Housing Development Agency
Tennessee Human Rights Commission
Tennessee Registry of Election Finance
Tennessee Regulatory Agency (TRA)
Tennessee Treasury Department
Tennessee Student Assistance Corporation (TSAC)
Tennessee Wildlife Resources Agency
Tennessee's Rehabilitative Initiative in Correction (TRICOR)